

**United States Bankruptcy Administrator
Middle District of North Carolina
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TO: Counsel for Debtors, Creditors' Committees, and Trustees; Accountants; and
Other Professionals Participating in Chapter 11 Cases

FROM: Michael D. West

SUBJECT: Amended Chapter 11 Fee Application Guidelines

EFFECTIVE DATE: January 1, 1999

Effective January 1, 1997, the court replaced the former Chapter 11 interim fee application system with a new fee application policy that was designed to more fairly compensate professionals for their work. For cases filed after January 1, 1997, applicants must follow the new fee guidelines, i.e. the new guidelines are not applicable to cases filed before January 1, 1997. This is an amended version of the new guidelines which will be effective for fee applications filed after January 1, 1999.

I. General Procedures

In a Chapter 11 case, the attorney for the debtor, the attorney for the unsecured creditors' committee, the trustee, the examiner, the attorneys for the trustee and examiner, and the accountant, as well as certain other professionals, may request an interim allowance of compensation on an initial and quarterly basis. The procedures to be followed are set forth below.

A. Initial Application After the creditors' meeting has been held (usually within 20 to 40 days from the date that the petition was filed), the attorney for the debtor, the attorney for the creditors' committee, and other professionals whose employment has been approved by the court or who are otherwise seeking compensation from the bankruptcy estate may file an application for compensation for services rendered and for reimbursement of expenses through the date of the creditors' meeting. As discussed more fully below, an application must include a detailed itemization of services rendered, the dates the services were rendered, and the amount of time the services entailed. If the debtor's attorney (or other professional) received a retainer from the debtor at the time the petition was filed, a fee application must still be filed just as if no retainer had been received. The fee approved by the court will then be drawn against the pre-petition retainer; no fees will be paid from bankruptcy estate funds until the retainer has been depleted.

B. The initial fee application should include a request that the applicant be allowed to apply for and receive interim compensation on a quarterly basis for future services to be rendered to the estate at the rates as set by the court. In exceptional circumstances and for cause shown, the applicant may request to receive compensation on a monthly basis. Such exceptional circumstances would be limited to large and complex cases, or those in which the applicants were in small firms that could not economically survive such a drain on financial resources.

C. The court will set a hearing on the initial application for compensation and on the applicant's request for permission to file future requests for interim compensation. The hearing will be set with at least twenty days' notice to all creditors and other interested parties. After a hearing is held on a fee application, the applicant requesting the fee must prepare an appropriate order approving the fees and expenses, setting forth the hourly rates approved by the court, and approving the arrangement for future interim compensation.

D. Interim Applications Following the initial application, interim fee applications may be

filed on a quarterly basis and will be considered for approval in accordance with the following schedule:

| <u>For Quarter Ending</u> | <u>File with the Clerk and</u> <u>Serve BA on or Before</u> |
|---------------------------|--|
|---------------------------|--|

| | |
|--------------|------------|
| March 31 | April 20 |
| June 30 | July 20 |
| September 30 | October 20 |
| December 31 | January 20 |

Failure to timely file the application will delay consideration of the fee request until the next quarter.

E. After an interim application has been noticed, it will be held in the Clerk's Office for a period of at least ten days to allow any party-in-interest the opportunity to review and consider the application, and to file an objection if desired. The court will set a hearing if an objection to a quarterly fee application is filed or if the court desires that it be set for hearing. If the application is approved in whole or in part without a hearing, an approval letter will be mailed by the Clerk's Office to the applicant and to the debtor upon approval of the application.

F. The applicant must file with fee applications:

1. A Summary of Services Rendered during the previous quarter (copy of form attached);
2. A Categorized Summary of Services Rendered during the previous quarter (copy of form attached);
3. Estimate of Total Fees to be Incurred (copy of form attached);
4. A Summary of Accumulated Services Rendered and Expenses Incurred (copy of form attached);
5. A copy of the order approving the employment of the professional and the application upon which the order was based ;
6. Biographical information; and.

B.

7. A detailed itemization of the services rendered, the date rendered, and the amount of time spent.

Attached is a summary that shows more specifically each item that must be included with each type of fee application (initial, interim, and final) and in what order the information must appear.

G. Accountants' fee applications are subject to all provisions of these fee application guidelines.

II. Form/Content of Fee Applications

A. Checklist

A checklist to aid applicants in organizing initial, interim, and final fee applications is included on **page 10** of these guidelines.

B. Biographical Information

Each fee application (initial, interim and final) must include a brief biographical description of each of the individuals for whom compensation is sought, including paraprofessionals. This information is necessary to help evaluate the applicants and to aid in the determination of an appropriate rate of compensation. An application received without this information cannot be properly evaluated, which may delay the court's consideration of the application for compensation. The biographical information should include at least the following:

1. Name
2. Position in the firm
3. Educational background
4. Professional (or paraprofessional) background, including at least the following:
 - a. Number of years of general experience
 - b. Number of years of bankruptcy experience
 - c. Specialization or certification
 - d. Percentage of practice devoted to bankruptcy
5. Usual billing rate

C. Attestation

The applicant submitting the application must include a statement to the effect that the application complies with the fee guidelines. This statement is to be included on the Summary of Services Rendered, as shown on the attached form.

D. Estimate of Total Expected Fees

Counsel for the debtor, counsel for the unsecured creditors' committee, counsel for a trustee, and any other professional who will be filing more than a single fee application in any case must include in the fee applications a projection, by category (see below), of the amount of fees that they expect will be incurred in the case from beginning to end. This projection should be revised at least every six months if the projection has changed materially.

E. Categorization of Activities is Required.

Activities must be categorized. All supporting time details should be grouped by category, with time entries appearing in chronological order within the category.¹ Although the categories could vary based on the circumstances of each particular case, the following should be used, at a minimum:

ATTORNEYS

1. General case administration;
2. Employee benefits;
3. Preparing for and defending relief from stay motions;
4. Negotiation and drafting of plan and disclosure statement;
5. Executory contracts and lease issues;
6. Claims administration and objections;
7. Adversary proceedings (separately designated);
8. Fee applications;
9. Post-confirmation issues;
10. Intra-office conferences/multi-person activities;
11. Travel; and
12. Other.

ACCOUNTANTS/FINANCIAL CONSULTANTS

1. Accounting/SEC information -- Activities related to maintaining books of account, preparation of financial statements and account analysis;.
2. Auditing;
3. Business analysis -- Preparation and review of company business plan, development and review of business strategies; preparation and review of cash flow forecasts and feasibility studies;
4. Liquidation analysis;
5. Valuation -- Appraisals of assets or review of appraisals;
6. Conferring among other professionals;
7. Reviewing the work of other professionals;
8. Plan and disclosure statement -- Formulation, presentation and confirmation;
9. Tax issues;
10. Litigation consulting -- Services related to bankruptcy matters such as insolvency, feasibility, avoiding actions, forensic accounting, etc.;
11. Fee application preparation;
12. Travel; and
13. Other.

B.

E. Time Entries

¹

In other words, if Tom Smith had two entries in the Travel category on 1/3/97 and 1/22/97 and Mary Jones had a Travel category entry on 1/13/97, Tom Smith's 1/3/97 entry would be followed by Mary Smith's 1/13/97 entry; Tom Smith's 1/22/97 travel time would be the final entry. Time should **not** be grouped first by individual and then by date within the category.

Professionals must file *detailed* fee applications, which will be the subject of substantial scrutiny by other parties in the case, as well as independent review by the court regardless of whether an objection is filed, to determine the reasonableness of the fees requested.

1. More Detail Required.

Fee applications must provide much more detailed descriptions of the services than may have generally been provided by applicants in the past. Each discrete activity must be fully described, and the time expended on *each* activity must be disclosed. All time detail should be in hours and in decimal notation. Billing increments of one-tenth of an hour are required; quarter-hour increments are not acceptable. Examples of unacceptable time notations are "55 minutes," "2 ½ hours" and "½ day." Apparent "minimum" billing times, such as .20 hours for a phone call or .30 hours for a letter (regardless of the length of the call or letter), are not acceptable and may result in a reduction in allowed hours.

2. Do Not Combine Entries.

Entries in applications must not be combined. The practice of "lumping" several different tasks together is unacceptable, as it makes it difficult to separate compensable items from those that may be noncompensable. Fees may be routinely reduced for entries that are lumped together. Accordingly, each discrete activity must be itemized and described in sufficient detail to allow a determination of whether the time spent on the activity was reasonable and necessary.

G. Other Time Entry Information/Requirements

1. Adversary Proceedings -- Each adversary proceeding should be separately designated such that the results obtained from each adversary proceeding can be evaluated in relation to the cost of the litigation.
2. Intraoffice Conferences/Multi-Attorney Activities -- Each time entry for a multi-timekeeper activity must reflect the name of each of the other timekeepers in attendance and whether time has been billed by the timekeeper for his or her participation in the activity. If more than one person has billed for the activity, the need for billing by more than one timekeeper must be clearly explained. Absent such an explanation, the time expended by one of the timekeepers may be disallowed. When the nature of the case involved is such that more than one professional will be needed to work on the matter, the need should also be described in the narrative body of the initial and final applications.
3. Travel Time -- Travel time will be compensated at no more than one-half of the professional's allowed rate. Local travel is usually considered to be an overhead expense built into the professional's hourly rate and is not separately compensable.
4. Court Time -- Court time should include only time *actually spent in court hearings* and should not include travel time to or from court or any time spent in any conferences held in conjunction with the court appearance. Court time also includes the meeting of creditors held pursuant to Section 341.
5. Ministerial and Clerical Tasks -- Ministerial and clerical tasks performed by a

professional or a paraprofessional person are not compensable. Nonprofessional duties are considered to be overhead and assumed to be part of the professional's billing rate. Therefore, such tasks as typing, opening the mail, copying, filing and the like will be considered to be noncompensable unless the description clearly justifies a need for these tasks to be performed by a professional or paraprofessional.

Fees will also be reduced for attorneys' failure to use paralegals to perform tasks that do not need to be performed by an attorney.

III. Hourly Rates of Compensation

Fee applicants may submit fee applications based on reasonable hourly rates consistent with Section 330² of the Bankruptcy Code; there are no longer set interim hourly rates. The court will consider at least the following criteria in determining the hourly rate to be awarded to each applicant:

1. The time expended;
2. The nature and extent of the services rendered;
3. The value of the services to the estate; and
4. The cost of comparable services other than in a case under Title 11.

New
↘

Each application must clearly set forth whether there has been a change in hourly rate(s) being requested, as compared with the applicant's prior fee application(s) in the same case. See Summary Of Services Rendered/Application for Compensation and Reimbursement of Expenses (copy of form attached).

IV. Holdback Provisions

It shall be up to the judge in each case to decide whether to implement some type of holdback procedure. Provided a case is moving at a satisfactory pace, usually no holdback procedure would be warranted. If a holdback procedure is implemented, the portion of fees that is held back would be available to be paid upon completion of the case and submission of a final fee application.

There may be some instances in which a fee enhancement or bonus would be appropriate; however, this would occur only in the rare and exceptional case inasmuch as the court will have already made a determination that the professional is receiving a reasonable hourly rate for the services.

V. Two Summary Charts of Time and Expenses

² Or § 506(b) or § 506(c), as may be applicable.

A. By Individual

Each fee application must contain a summary chart showing the name of the individual, his or her position in the firm (partner, associate, paralegal, etc.), the total hours billed by each person, the rate per hour, and the extended amount. Time itemizations should be totaled by individual and "grand total" for the period for which compensation is sought. This information should be in the form of a single-spaced chart, similar to the following:

| Name | Position | Hours | Rate | Total |
|-------------------------|-----------------|--------------|-------------|--------------|
| Susan Jones | Partner | 12.0 | 130.00 | 1,560.00 |
| Susan Jones-Travel | Partner | 2.5 | 65.00 | 162.50 |
| Tom Smith | Associate | 26.0 | 90.00 | 2,340.00 |
| Anne Foster | Paralegal | 11.0 | 50.00 | 550.00 |
| Total | | 51.5 | | 4,612.50 |
| Total Expenses * | | | | 122.00 |
| Total Fees and Expenses | | | | 4,734.50 |

* The expenses must also be itemized elsewhere in the application.

The Summary of Services Rendered should be the first page of every interim fee application; do not submit a pleading-type document as the first page of an interim fee application. When filing interim fee applications with the Clerk's Office, file one original of the entire application, along with an additional copy of just the Summary of Services Rendered page (the attachments to the Summary should not be included). (See page 10 for checklist that describes the order in which the information should appear.)

B. By Category

Each fee application must also contain a summary chart showing each category, the total hours billed in each category, the rate per hour in each category, and the extended amount. Time itemizations should be totaled by number of hours and the dollar amount. This information should be in the form of a single-spaced chart, similar to the following:

| Category | Hours | Rate | Total |
|--|--------------|-------------|--------------|
| Case administration | 8.5 | 165.00 | 1,402.50 |
| | 2.0 | 130.00 | 260.00 |
| Employee benefits | 1.2 | 165.00 | 198.00 |
| Relief from stay motions | 2.3 | 130.00 | 299.00 |
| Plan and disclosure statement | | | |
| Executory contracts/lease issues | 3.5 | 165.00 | 577.50 |
| | 1.3 | 130.00 | 169.00 |
| Claims | 1.8 | 130.00 | 234.00 |
| Adversary proceedings | | | |
| Fee applications | 1.4 | 50.00 | 70.00 |
| Post-confirmation issues | | | |
| Intra-office conferences/multi-person activities | 1.9 | 165.00 | 313.50 |
| Travel | 3.0 | 82.50 | 247.50 |
| | 26.9 | | 3,771.00 |

VI. Expenses

Detailed expenses must be furnished in each fee application; it is important that each expense be set forth in detail and justified as to its benefit to the estate. The application must contain a statement to the effect that the expenses are being billed *at cost* (that is, there is no added profit or other multiplier added to the applicant's cost). The expense items that appear in applications most frequently are discussed below.

- A. Telephone -- Under no circumstances are applicants permitted to "guesstimate" long distance or cellular phone charges and simply charge a flat fee for each call. The expenses requested must reflect the actual expenses incurred.
- B. Copy Charges -- The nature of the copying, the number of copies, the charge per copy, and the total charge should be disclosed. The description should also state whether the copying was produced "in house" or was done by an outside service.
- C. Mileage -- The date, the destination and purpose of each trip, the number of miles, the charge per mile, and the total charge should be stated.
- D. Other Travel -- Where a trip requires expenses such as meals or lodging, the details of each expense (meals, lodging, transportation, etc.) should be clearly stated, along with the total cost. A single entry for the total expense of a trip is not adequate. The description should also explain why the trip was necessary.

If air travel is used in lieu of automobile travel, the cost difference between the alternative method and mileage should be calculated and clearly shown. Such a calculation should include both the cost of the travel time (hours times rate for one method versus hours times rate for the other) and the expense (ticket price versus mileage) of travel. Where a substantial difference exists between the alternative methods, and the more expensive method is used, the use of the more expensive travel must be justified.

- E. Accelerated Delivery Methods The use of accelerated methods of delivery is often necessary and of benefit to the estate. Since such methods are considerably more expensive than regular mail, however, the application should indicate why such use was necessary and how it benefited the estate.

- 1. Messenger/Courier Service

Many applications include charges for time and mileage for hand-delivery of documents to the court, and to other parties. Unless the need for hand-delivery of the documents is clearly justified in the application, expenses or fees for hand-delivery of documents are not reimbursable.

- 2. Facsimile Charges

Charges for faxes are limited to the actual cost of incoming and outgoing faxes. For outgoing faxes, expenses are limited to the cost of any long distance telephone charges incurred. For incoming facsimiles, reimbursable expenses are limited to the actual cost of the faxes received, and the applicant must disclose the number of pages received, the charge per page, and the total charge for incoming faxes.

VII. Disclosure/Documentation of Pre-Petition Time Charged Against Retainers

When a retainer is drawn down prior to filing the petition, there must be a full disclosure and documentation of the total amount of pre-petition retainer paid and the time charged against the retainer. This disclosure and documentation of the pre-petition time charged against the retainer is to be set forth in accordance with the usual itemizations that are required for post-petition fee applications. The disclosure and documentation of the retainer and the pre-petition time charged against the retainer should be made as part of the Rule 2016(b) Disclosure of Compensation Statement and in the initial application for compensation.

When the pre-petition time charged against retainer is to be included in the applicant's initial application for compensation, this time should be clearly labeled as "pre-petition time charged against retainer." The application must also state that the information on pre-petition time was included in the Rule 2016(b) Disclosure of Compensation Statement.

VIII. Service of Fee Applications

VIII.

The original of each fee application must be filed with the court. An additional copy of just the Summary of Services Rendered page must also be filed with the court. A copy of each application must also be served on the Bankruptcy Administrator at the same time that the original application is filed with the court. In no event should the original of any fee application be served on the Bankruptcy Administrator. Service to the Bankruptcy Administrator should be by mail or by delivery to the Bankruptcy Administrator's Office. (Any copied delivered to the Clerk's Office for routing to the Bankruptcy Administrator will be forwarded only if the copy is clearly marked, "BA's COPY.") Failure to serve a copy of a fee application upon the Bankruptcy Administrator will likely delay the court's consideration of the fee application.

The attorney for the debtor is to serve a copy of each application on the attorney for the creditors' committee (if there is one). The attorney for the creditors' committee is to serve a copy of any application on the attorney for the debtor and chairperson of the creditors' committee.

IX. Procedures for Filing "Supplemental" Final Fee Applications

The applicant should include in the application for final compensation, and in the order to be entered thereon, provision for the applicant to submit "supplemental" fee applications, for the period subsequent to entry of the order allowing final compensation and until entry of the final decree. Any supplemental fee applications should be filed and otherwise processed in accordance with the usual Chapter 11 interim fee application practices.

X. Submission of Computer Disks

Professionals may be required to submit to the Bankruptcy Administrator their time entry information on floppy disks. In the event that the Bankruptcy Administrator determines that such computerized information would be useful in the review of fee applications, the Bankruptcy Administrator will notify the professionals early in the case and will discuss the compatibility of the applicant's computer billing system with the Bankruptcy Administrator's computer system. If such systems are compatible, then a floppy disk, as well as a hard copy, of the time entries must be furnished to the Bankruptcy Administrator.

Initial Application

| ✓ | Page | | Notes |
|--------------------------|------|---|--|
| <input type="checkbox"/> | 1 | Narrative, pleading-type application | |
| <input type="checkbox"/> | 2 | Summary of Services Rendered, including attestation | <ul style="list-style-type: none"> ◦ Include an extra copy of this page only w/application filed in clerk's office ◦ Include attestation at bottom of Summary of Services page |
| <input type="checkbox"/> | 3 | Categorized Summary of Services Rendered | |
| <input type="checkbox"/> | 4 | Estimates of Total Fees to be Incurred (include all copies to date) | |
| <input type="checkbox"/> | 5 | Application for and Order Approving Employment | |
| <input type="checkbox"/> | 6 | Biographical information | |
| <input type="checkbox"/> | 7 | Itemization of services and expenses | |

Interim Applications

| ✓ | Page | | Notes |
|--------------------------|------|---|--|
| <input type="checkbox"/> | 1 | Summary of Services Rendered, including attestation | <ul style="list-style-type: none"> ◦ Include an extra copy of this page only w/application filed in clerk's office ◦ Include attestation at bottom of Summary of Services page |
| <input type="checkbox"/> | 2 | Categorized Summary of Services Rendered | |
| <input type="checkbox"/> | 3 | Summary of Accumulated Services Rendered | |
| <input type="checkbox"/> | 4 | Estimate of Total Fees to be Incurred (also include a copy of each previously-filed estimate) | |
| <input type="checkbox"/> | 5 | Application for and Order Approving Employment | |
| <input type="checkbox"/> | 6 | Biographical information | |
| <input type="checkbox"/> | 7 | Itemization of services and expenses | |

Final Application

| ✓ | Page | | Notes |
|--------------------------|------|---|--|
| <input type="checkbox"/> | 1 | Narrative, pleading-type application | |
| <input type="checkbox"/> | 2 | Summary of Services Rendered, including attestation | <ul style="list-style-type: none"> ◦ Include an extra copy of this page only w/application filed in clerk's office ◦ Include attestation at bottom of Summary of Services page |
| <input type="checkbox"/> | 3 | Categorized Summary of Services Rendered | |
| <input type="checkbox"/> | 4 | Summary of Accumulated Services Rendered | |
| <input type="checkbox"/> | 5 | Estimate of Total Fees to be Incurred (also include a copy of each previously-filed estimate) | |
| <input type="checkbox"/> | 6 | Application for and Order Approving Employment | |
| <input type="checkbox"/> | 7 | Biographical information | |
| <input type="checkbox"/> | 8 | Itemization of services and expenses | |

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

In re:

Debtor.

Case No. 9__-____ C-11 __

**SUMMARY OF SERVICES RENDERED/
APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES**

By: _____

From _____, 199__ through _____, 199__, the undersigned person/firm performed professional services for the above-named bankruptcy estate in the capacity of _____. Attached to the summary is a detailed itemization of time expended and expenses incurred in the performance of these professional services.

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| Name | Title | Hours | Hourly Rate | Total |
|--|-------|-------|-------------|-------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| Total | | | | |
| Expenses (as shown on attachment) | | | | |
| Total Amount Requested | | | | |

| Hourly Rate(s) Requested in Previous Application(s) |
|--|
| |
| |
| |
| |

I certify that the information contained in this application is true and accurate and that the application complies with the court's Chapter 11 fee guidelines currently in effect.

This the ____ day of _____, 1999.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

In re:

Debtor.

Case No. 9__ - _____ C-11 __

CATEGORIZED SUMMARY OF SERVICES RENDERED

By: _____

From _____, 199__ through _____, 199__, the undersigned person/firm performed professional services for the above-named bankruptcy estate in the capacity of _____. The following summarizes by category the time expended by the applicant:

| Category | Hours | Hourly Rate | Total |
|--------------|-------|----------------|-------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| TOTAL | | | |

This the ____ day of _____, 1999.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

In re:

Debtor.

Case No. 9__-____ C-11 __

SUMMARY OF ACCUMULATED SERVICES RENDERED AND EXPENSES INCURRED

Applicant: _____

Total fees previously:

Requested: \$ _____

Court-approved: \$ _____

Paid to applicant:: \$ _____

Total expenses previously:

Requested: \$ _____

Court-approved: \$ _____

Paid to applicant:: \$ _____

Fees requested
in this application:

\$ _____

Expenses requested
in this application:

\$ _____

Balance in retainer:

\$ _____

This form must be completed and attached to each and every application for compensation filed in bankruptcy cases pending in the Middle District of North Carolina regardless of the reason it is submitted and regardless of the Chapter of the Bankruptcy Code under which the applicant is proceeding.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

In re:

Debtor.

Case No. 9__ - _____ C-11 ____

ESTIMATE OF TOTAL FEES TO BE INCURRED

By: _____

The undersigned person/firm estimates that the following reflects the fees, by category, that are expected to be incurred during the course of this Chapter 11 case:

| Category | Hours | Rate | Total |
|--|-------|------|-------|
| Case administration | | | |
| Employee benefits | | | |
| Relief from stay motions | | | |
| Plan and disclosure statement | | | |
| Executory contracts/lease issues | | | |
| Claims administration and objections | | | |
| Adversary proceedings | | | |
| Fee applications | | | |
| Post-confirmation issues | | | |
| Intra-office conferences/multi-person activities | | | |
| Travel | | | |
| Other | | | |
| TOTAL | | | |

This the ____ day of _____, 1999.

This form is to be completed by counsel for the debtor, counsel for the unsecured creditors' committee, and all other professionals who will be filing more than one fee application, and the form must be filed with the initial fee application. (Accountants must revise the form to include the categories to be used by accountants.)